IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE NINETEENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE Dr. JUSTICE G.YETHIRAJULU

WRIT PETITION NO : 18718 of 2004

Between:

Sr. Divisional Personnel Officer, East Coast

Railways, Khurda Road,
PO : Jatni, District Khurda, Orissa State

..... PETITIONER

AND

1 Duevarasetti Lingaraju, S/o. Late Dandasi,
R/o. Relli Veedhi, Mandasa Mandal, Srikakulam District.
2 Dulia Kamalamma, W/o. Late Madhavo,
R/o. Relli Veedhi, Mandasa Mandal, Srikakulam District.
3 Dulia Rama Rao, S/o. Late Madhavo,
R/o. Relli Veedhi, Mandasa Mandal, Srikakulam District.
4 Dulia Apparao, S/o. Late Madhavo,
R/o. Relli Veedhi, Mandasa Mandal, Srikakulam District.
5 The Junior Civil Judge, Sompeta, Srikakulam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, particularly in nature of writ of mandamus or any other appropriate writ or order or orders as deem fit and necessary, thereby declaring the show cause notice dated 13-5-2004 issued by the Junior Civil Judge, Sompeta in E.A. No. 5/2003 in O.S.82/2002 in pursuance of earlier attachment order dated 09-06-2003 as null and void, illegal, without jurisdiction and not enforceable under law.

Counsel for the Petitioner: MR.GOURI SHANKAR SANGHI

Counsel for the Respondents 1 to 4: MR.K.NAVEEN KUMAR

The Court at the admission stage, made the following :

THE HON'BLE Dr. JUSTICE G.YETHIRAJULU

WRIT PETITION No. 18718 of 2004

ORDER:

The Petitioner is the East Coast Railways with Head Quarters at Khurda Road, Jatni in Orissa. The respondents 2 to 4 are the Legal Representatives of Sri D.Madhav, who was an employee of the petitioner. The said Madhav died on 21-02-2000. The respondents 2 to 4 claimed the terminal benefits on account of the death of the said Madhav. The petitioner did not release those amounts on the ground that the respondents 2 to 4 failed to pay the rents after the death of the deceased employee and failed to vacate the residential quarter of the petitioner. The petitioner therefore contends that it is entitled to appropriate major portion of the amount payable to the respondents 2 to 4 towards the arrears of rent and penalty.

2. The petitioner further contends that the 1st respondent filed a suit covered by O.S.No.82 of 2002 on the file of the Junior Civil Judge, Sompeta, against the respondents 2 to 4 for recovery of money and it was decreed on 25-10-2002. The 1st respondent filed E.P.No.5 of 2003 for recovery of Rs.97,732/- in pursuance of the decree granted by the Civil Court. At the time of pending of the suit, the 1st respondent filed I.A.No.153 of 2002 and obtained an order of attachment before judgment on 21-06-2002 for attachment of Rs.82,400/- from the D.C.R.G. funds of the deceased employee. The petitioner further contends that it came to know about the decree of the suit after receipt of the notices in the E.P. and filed an application covered by E.A.(S.R.).No.1730 of 2004 and another application covered by E.A. (S.R.).No.1838 of 2004 contending that the petitioner has a lien over the amount due towards arrears of rent. Therefore, the attachment of the amount to the extent of the

amount due to the petitioner cannot be maintained. The petitioner further contends that the learned Junior Civil Judge without numbering those applications directed the petitioner to deposit the amount covered by the E.P.No.5 of 2003. Therefore, the petitioner approached this Court through this writ petition, seeking to declare that the show cause notice dtd.13-05-2004 issued by the Junior Civil Judge, Sompeta in E.P.No.5 of 2003 in O.S.No.82 of 2002 is illegal, void and without jurisdiction.

3. When the execution proceedings are pending before the Civil Court, the petitioner is expected to agitate about its rights in the said court and the writ Court is not expected to interfere with the proceedings of the Civil Court unless it is noticed that there is inherent lack of jurisdiction to the said Court to entertain the matter. In the light of the above circumstances, the petitioner cannot maintain the present writ petition.

4. The learned counsel for the petitioner submitted that the petitioner is ready to get an order on merits before the execution Court but the learned Junior Civil Judge, Sompeta, is not numbering the applications filed by the petitioner and posting the matter for further steps for disposal according to the rules.

5. In the light of the above submissions made by the petitioner's counsel, there shall be a direction to the Junior Civil Judge, Sompeta, to entertain the applications filed by the petitioner covered by E.A.(S.R.).No.1730 of 2004 and E.A. (S.R.).No.1838 of 2004, if they are in order and post the applications for further steps along with E.P.No.5 of 2003 and pass appropriate orders on merits on the applications filed by the petitioner within a period of two months from the date of receipt of a copy of this order. The civil Court shall take further steps regarding the amount covered by E.P.No.5 of 2003 after the disposal of the applications filed by the petitioner.

6. The writ petition is disposed of with the above observations.

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November 19, 2004

Kvr

To

1. The Junior Civil Judge, Sompeta, Srikakulam District.
2. 2 C.D. Copies.